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**Federal Communications Commission**  
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Revision of Part 22 and Part 90 of the	)	WT Docket No. 96-18
Commission's Rules to Facilitate	)	
Future Development of Paging Systems	)	
	)	
Implementation of Section 309(j)	)	PP Docket No. 93-253
of the Communications Act - -	)	
Competitive Bidding	)	

**PETITION FOR PARTIAL RECONSIDERATION  
AND REQUEST FOR CLARIFICATION**

Pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, Arch Communications Group, Inc. ("Arch"),<sup>1</sup> by its attorneys, seeks partial reconsideration and clarification of the Second Report and Order adopted in the above-referenced dockets.<sup>2</sup>

**I. INTRODUCTION**

Arch concurs in the Commission's decision to use the fixed distance tables set forth in Section 22.537 of the Commission's rules for purposes of establishing an incumbent's protected interfering contours for 931 MHz and exclusive 929 MHz

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<sup>1</sup> Arch is a leading provider of paging services with over 3 million pagers currently in service. Arch operates in more than 40 states, and in 80 of the 100 largest markets in the United States.

<sup>2</sup> *In the Matter of Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Implementation of Section 309(j) of the Communications Act - - Competitive Bidding*, WT Docket No. 96-18 and PP Docket No. 93-253, Second Report and Order and Further Notice of Proposed Rulemaking, 62 Fed. Reg. 11616 (1997). This Petition relates solely to issues addressed in the *Second Report and Order*. Hereinafter, this portion of the document will be referred to as "*Second R&O*."

channels prior to auction. Arch is concerned, however, that using these tables for post-auction licensing will lead to the unintended result of preventing incumbents from fully serving their protected areas, thereby causing a possible disruption of service to customers. Arch therefore urges the Commission to allow incumbents, post auction, to use modified formulas based on a particular signal's actual propagation characteristics. This would allow an incumbent to make necessary modifications to its system post auction without sacrificing service to the public or encroaching upon the market area licensee's white space.

Arch also requests that the Commission reconsider its short-form filing procedures and upfront payment requirements because these provisions, when combined with the proposed substantial service option, facilitate the award of licenses to entities that have no intent to ever provide service to the public. Finally, Arch requests clarification that incumbents operating on shared paging channels have not been elevated to exclusive status.

## **II. THE COMMISSION SHOULD ALLOW INCUMBENTS TO USE FORMULAS RATHER THAN TABLES IN POST-AUCTION LICENSING**

The Commission originally proposed adopting formulas to calculate signal propagation for 931 MHz and exclusive 929 MHz operations.<sup>3</sup> Commenters generally opposed this proposal because the suggested formulas reduced incumbents' existing

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<sup>3</sup> *In the Matter of Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Implementation of Section 309(j) of the Communications Act - - Competitive Bidding*, WT Docket No. 96-18 and PP Docket No. 93-253, Notice of Proposed Rulemaking, 11 FCC Rcd 3108, ¶¶ 49-56 (1996) ("*Paging Auction NPRM*").

service and interference contours, and did not accurately represent real world coverage.<sup>4</sup>

In response, the Commission has decided to allow incumbents to use the fixed distance tables in Section 22.537 of the rules to calculate contours for their 931 MHz and exclusive 929 MHz facilities.<sup>5</sup> Arch concurs in this decision for purposes of determining an incumbent's protected service area prior to auction, but is concerned that rigid adherence to the tables in post-auction licensing situations will produce unintended results. Specifically, application of the fixed distance tables post auction may actually prevent an incumbent from being able to fully serve its protected area, and therefore disrupt service to existing customers.

Arch's concern stems from the fact that paging operators routinely relocate transmitters because of damage to an existing site or loss of a lease. Moreover, the Commission has acknowledged that incumbents should have the flexibility to modify and maintain their systems, enabling them "to fill in 'dead spots' in coverage or to reconfigure their systems to increase capacity within their service area and better serve the public."<sup>6</sup> The Commission has also recognized that "there may be circumstances in

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<sup>4</sup> See, e.g., Comments of AirTouch, Inc. at 21-26; PCIA at 24-25; PageNet at 11-18. Reply Comments of Ameritech at 8-9; PCIA at 17; AirTouch at 12-14. While Arch commented on the inaccuracies of the Commission's proposed formulas, it nevertheless stated that modified formulas -- based more closely on real-world experience -- may be necessary for future licensing. See Joint Comments of Arch and Westlink Licensee Corporation ("Joint Comments of Arch") at 14.

<sup>5</sup> *Second R&O* at ¶ 69.

<sup>6</sup> *Paging Auction NPRM* at ¶ 39. As a specific example, many incumbents have begun converting their paging networks from low speed protocols to newer, high speed protocols. This conversion often requires vacating high elevation transmitter sites and replacing them with one or more new sites at lower elevations and  
(continued...)

which an incumbent should be permitted to make minor modifications to its service area to preserve system viability.”<sup>7</sup>

Rigid adherence to the fixed distance tables will severely undermine an incumbent’s ability to make necessary modifications to its system, in addition to restricting its flexibility, because the composite contours of the relocated facility, if calculated using the tables, would appear to encroach upon the market area licensee’s protected area. Further, because the tables will preclude post auction relocation of a transmitter closer to a border with the market area licensee, an incumbent needing to relocate a transmitter post auction would be restricted to moving away from its contour, thereby losing part or all of its service area. Arch therefore requests that the Commission reconsider its decision regarding use of the fixed distance tables. The Commission instead should allow licensees in the post-auction environment to use modified formulas in conjunction with (and which correspond to) the fixed tables. As Arch pointed out in its earlier comments, Comp Comm, Inc. has proposed prototype formulas which more accurately reflect the reliable service contours of 931 MHz and exclusive 929 MHz facilities.<sup>8</sup> Such

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<sup>6</sup> (...continued)  
different locations. High elevation sites can cause internal interference, known as delay spread, to high speed simulcast systems operating as a single simulcast zone. Due to the large number of transmitters in service in large existing subscriber bases, incumbents will be gradually converting their various networks, thereby necessarily relocating transmitters for many years to come.

<sup>7</sup> *Paging Auction NPRM* at ¶ 39.

<sup>8</sup> See Joint Comments of Arch at 14. Comp Comm, Inc., in its comments, proposed a contour formula based upon a median receive signal strength of 33 dBuV/m, and an interference contour formula, separated by desired-to-undesired signal ratio of 26 dB, based upon a signal strength of 7 dBuV/m. See Comments of Comp Comm at 5-6.

formulas, based on the tables, will allow an incumbent to make necessary modifications to its system without sacrificing service to the public or encroaching upon the market area licensee's white space.<sup>9</sup>

### **III. THE COMMISSION'S GEOGRAPHIC AREA AUCTION PROPOSALS ENCOURAGE SPECULATION**

In the *Second R&O*, the Commission acknowledged that "it is important, as commenters point out, to deter speculation and ensure, to the greatest extent practicable, that only sincere bidders participate in the auction."<sup>10</sup> The procedures adopted for the paging industry do not achieve these goals. Indeed, it is difficult to imagine an auction/licensing scheme more conducive to participation by speculators.<sup>11</sup> Consider the following:

- Under the procedures established, speculators can mark "all" on their short-form applications (Form 175) and, for a nominal upfront payment, bounce from one market to the next seeking bargain licenses which they believe can later be sold for a profit.
- Speculators will generally qualify for bidding credits, a fact that will enable them to outbid bona fide applicants.

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<sup>9</sup> Arch distinguishes this situation, in which an incumbent needs to make internal modifications which do not in any way extend beyond its protected contour, from the situation in which an incumbent negotiates with a geographic licensee for an expansion into the auction winner's white space. Arch has no objections to the Commission's requirement that the incumbent and geographic licensee enter into an agreement for such modifications. See *Second R&O* at ¶ 57.

<sup>10</sup> *Second R&O* at ¶ 134; see also *Id.* at ¶¶ 63, 135, 150, 162 and 195.

<sup>11</sup> This is contrary to the Commission's stated objective of using auctions to award licenses to those that value them the most since these entities will be most likely to develop systems and provide service. See *In the Matter of Implementation of Section 309(j) of the Communications Act - - Competitive Bidding*, PP Docket No. 93-253, Second Report and Order, 9 FCC Rcd 2348, ¶ 5 (1994).

- Speculators will generally be eligible for the installment payment option. This will give them at least two years to find a buyer during which time they will only have made a 20 percent down payment and interest-only payments.
- During this same period, the speculator has no obligation to construct even a single site because of the substantial service alternative. Indeed, the speculator does not have to do anything until the end of year three at which point the speculator need only inform the Commission that it has elected the substantial service option. This will then give the speculator yet another two years in which to find a buyer without constructing or providing service. If no buyer is located in year five, the speculator can simply turn in the license and go out of business to avoid any default penalties.<sup>12</sup>

In short, an entity with no intention of ever providing service can acquire and hold paging licenses for a number of years with only a nominal capital outlay.<sup>13</sup> To prevent this from occurring, Arch requests that the Commission reconsider its auction procedures consistent with the recommendations set forth below in Section IV.

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<sup>12</sup> The procedures adopted are thus contrary to the Commission's Section 309(j)(4)(B) mandate to consider regulations in designing auctions to include performance standards and deadlines so as to "ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services." See 47 U.S.C. 309(j)(4)(B). The legislative history of Section 309(j)(4)(B) underscores Congress' intent that the Commission adopt performance requirements to prevent stockpiling or warehousing of frequencies and to promote rapid deployment of services. H.R. Rep. No. 103-111 at 246 (1993), *reprinted* in 1993 U.S.S.C.A.N. 378, 573.

<sup>13</sup> Congress intended auctions to prevent precisely this result. When discussing why lotteries as a means of licensing were not in the public interest, Congress stated that "many lottery applicants had no intention to build or operate a system using the spectrum, but instead only sought to acquire a license at nominal cost and then sell it, making a large profit and at the same time delaying the delivery of services to the public." H.R. Rep. No. 103-111, at 248, *reprinted* in 1993 U.S.C.C.A.N. 378, 575.

#### **IV. LIMITING THE LICENSES SUBJECT TO AUCTION AND MODIFYING THE SHORT-FORM AND UPFRONT PAYMENT PROVISIONS WILL DETER SPECULATORS**

One of the primary ways in which the Commission can minimize the harmful effects of speculators is to exempt from auction those paging channels on which incumbents can certify that 70 percent or more of the market's population is encompassed by the incumbent's existing service contours on those channels.<sup>14</sup> These incumbents, who already meet and exceed the five year build-out requirement, should be awarded the market area license without being subject to competing applications.

Arch understands that one possible objection to this proposal is that it will preclude licensees operating in one market from bidding on, and, therefore providing service in, adjacent markets. This concern can be resolved, however, by identifying markets where 70 percent of the population is already being served by a single entity, and limiting eligibility for these licenses to incumbents operating on the relevant frequency(ies) within or adjacent to those markets. Adopting this alternative will not necessarily result in a "limited" auction because there will often be more than a dozen qualified bidders.

If neither of these proposals is adopted, Arch urges the Commission, at a minimum, to revise its short-form and upfront payment requirements to minimize speculation. Specifically, the Commission should (1) require potential bidders to specify in their short-form each license in which they may be interested, and (2) adopt an upfront payment scheme which requires applicants to pay a modest sum for each license speci-

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<sup>14</sup> See Joint Comments of Arch at 20-22.

fied in their short-form application. Several commenters, including Arch,<sup>15</sup> explained that adoption of these proposals will require applicants to demonstrate a bona fide interest in the markets applied for.<sup>16</sup> License-by-license upfront payments will also help identify licenses of value to just a single interested party, thereby allowing those licenses to be awarded immediately.<sup>17</sup> This will in turn speed the overall auction process and ensure that service to the public is not needlessly delayed.<sup>18</sup> Arch disagrees with the Commission's belief that eliminating the "all" option or requiring upfront payments on a per-license basis will somehow limit a bidder's flexibility. Applicants will still be able to bid for all markets by listing all markets in their short-form if they are willing to make the necessary financial commitment.

**V. ARCH REQUESTS CLARIFICATION THAT THE COMMISSION HAS NOT ELEVATED INCUMBENTS OPERATING ON SHARED PAGING CHANNELS TO EXCLUSIVE STATUS**

Arch requests clarification that incumbents operating on shared paging channels have not been elevated to exclusive status. In paragraph 57 of the *Second R&O*, the Commission discusses the interference protection afforded incumbents by the market area licensee, and states that "the public interest would be served by allowing incumbent (non-geographic) paging licensees to continue to operate under their existing authoriza-

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<sup>15</sup> Joint Reply Comments of Arch and Westlink Licensee Corporation at 23; Comments of AirTouch at 45; PageNet at 43; PCIA at 30.

<sup>16</sup> See Joint Comments of Arch at 23.

<sup>17</sup> This will enable the Commission to fulfill its mandate under Section 309(j) of the Communications Act of 1934, as amended, to try and resolve mutual exclusivities using "other means" before going to auction. See 47 U.S.C. § 309(j)(6)(E).

<sup>18</sup> Comments of PCIA at 30; PageNet at 42. Reply Comments of PCIA at 24; Pacific Bell at 7.



tions *with full protection from co-channel interference.*"<sup>19</sup> This statement is inconsistent with the Commission's existing policies and rules governing shared paging channels because it appears to grant incumbents interference rights normally associated with exclusive channels.

The Commission has previously decided not to grant exclusive status to shared paging channels because the Commission determined that the cost and disruption of this change in policy outweighed any public benefits.<sup>20</sup> The Commission's statement in the *Second R&O*, however, appears to change this policy by affording incumbents operating on shared paging channels full protection from co-channel interference, a right these incumbents have not previously enjoyed. Arch therefore requests the Commission to clarify that it did not elevate incumbents operating on shared channels to exclusive status when it stated, generally, that incumbents operating on such channels are entitled to "full protection from co-channel interference."

## VI. CONCLUSION

For the reasons discussed herein, Arch requests that the Commission allow incumbents, post auction, to use modified formulas based on a particular signal's actual propagation characteristics. Arch also requests that the Commission reconsider its short-form filing procedures and upfront payment requirements because these provisions, when

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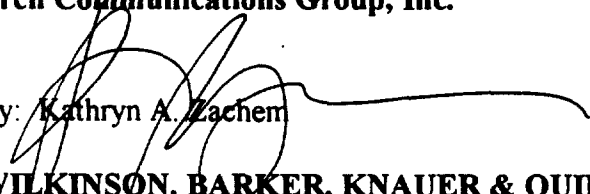
<sup>19</sup> *Second R&O* at ¶ 57 (emphasis added).

<sup>20</sup> *Id.* at 40.

combined with the proposed substantial service option, facilitate the award of licenses to entities that have no intent to ever provide service to the public. Finally, Arch requests clarification that incumbents operating on shared paging channels have not been elevated to exclusive status.

Respectfully submitted,

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